

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CLYDE H. MEANS,

Petitioner,

vs.

JACK PALMER, et al.,

Respondents.

Case No. 3:10-CV-00413-ECR-(RAM)

ORDER

Petitioner has paid the filing fee. The court has reviewed his petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. Petitioner will need to submit an amended petition.

Pursuant to a plea agreement, petitioner was convicted in the Fifth Judicial District Court of the State of Nevada for attempted sexual assault upon his 19-year-old son. The state court entered its judgment of conviction on July 10, 2007.¹ Petitioner appealed, and the Nevada Supreme Court affirmed on January 9, 2008. Petitioner then filed a post-conviction habeas corpus petition in state court on April 30, 2009. Ultimately, the Nevada Supreme Court determined on May 7, 2010, that the petition was untimely pursuant to Nev. Rev. Stat. § 34.726. Petitioner then commenced this action.

¹This is not the first judgment of conviction in petitioner's criminal proceeding. Petitioner received some sort of post-conviction relief, though he has not attached the order of the state court that granted him relief. See Means v. State, 103 P.3d 25 (Nev. 2004) (remanding for evidentiary hearing).

1 As a matter of form, the petition is confusing. In place of writing out his grounds for
2 relief, petitioner attached copies of documents that he had filed in various proceedings in state court.
3 The approach has its uses: Petitioner presents the same claims to this court that he presented to the
4 state courts, avoiding the possibility that a ground is not exhausted pursuant to 28 U.S.C. § 2254(b).
5 However, in each federal-petition ground, petitioner attaches the entire state-court document, which
6 in turn has multiple grounds. For example, in ground 2 of the federal petition, petitioner has six
7 separate claims for relief, themselves numbered grounds 1 through 6. It is entirely possible for
8 petitioner, respondents, and the court each to refer to “ground 3” and intend something completely
9 different from what the others intended. In an amended petition, petitioner will need to put each
10 claim in its own, separately numbered ground.

11 Much of the petition also duplicates itself. For example, ground 1(a) is a claim that
12 petitioner’s plea was unknowing and involuntary because he was not informed of the consequences
13 of lifetime supervision for being a sexual offender. He makes the same argument in ground 1 of
14 ground 2 and also in part of ground 4.² Ground 1(b), ground 2 of ground 2, and part of ground 4 are
15 all the same claim that the prosecutor breached the plea agreement at the sentencing hearing by
16 relying upon incorrect and unsubstantiated information in the pre-sentence investigation report. In
17 the amended petition, petitioner needs to eliminate the needless duplication of grounds.

18 Ground 1(c) is too vague to state a claim for relief. Apparently, when the trial court
19 first sentenced petitioner, it ordered that he pay \$900 for a psychosexual evaluation. Petitioner
20 claims that when he was re-sentenced, the trial court put the same order in the new judgment of
21 conviction. Often, when a court enters an amended order or judgment, it includes directives that
22 were in the original order or judgment but have already been satisfied. Petitioner needs to allege
23 that he actually paid \$900 for another psychosexual evaluation.

24 Ground 3 is also too vague to state a claim for relief. Petitioner attached two state-
25 court documents to make this ground. First, he attached an affidavit that rambles back and forth
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27 ²This is a good example of how referring to the grounds for relief is confused by petitioner’s
28 method of attaching entire state-court documents to each ground.

1 across events in this case. Petitioner does not make any constitutional claim here, and the
2 possibilities are numerous. He needs to state discrete claims in his amended petition, because the
3 court will not do that for him. Second, he attached a motion for entry of default judgment in the
4 state-court proceedings, and it is the mirror-image of the affidavit. It contains no constitutional
5 claims.

6 When petitioner submits his amended petition, he will need to attach a copy of every
7 state-court decision.


8 IT IS THEREFORE ORDERED that the clerk of the court file the petition.

9 IT IS FURTHER ORDERED that the clerk of the court shall send petitioner a
10 petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 form with instructions. Petitioner
11 shall have thirty (30) days from the date that this order is entered in which to file an amended
12 petition to correct the noted deficiencies. Failure to comply with this order will result in the
13 dismissal of this action.

14 IT IS FURTHER ORDERED that petitioner shall clearly title the amended petition
15 as such by placing the word "AMENDED" immediately above "Petition for a Writ of Habeas
16 Corpus Pursuant to 28 U.S.C. § 2254" on page 1 in the caption, and petitioner shall place the docket
17 number, 3:10-CV-00413-ECR-(RAM), above the word "AMENDED."

18 IT IS FURTHER ORDERED, as per prior agreement and so that respondents may be
19 electronically served with any amended petition and exhibits, that the clerk of court shall add
20 Attorney General Catherine Cortez Masto (listed under Cortez) as counsel for respondents and shall
21 make informal electronic service of this order upon respondents by directing a notice of electronic
22 filing to her office. Respondents' counsel shall enter a notice of appearance herein within twenty
23 (20) days of entry of this order, but no further response shall be required from respondents until
24 further order of the court.

25 DATED: August 16, 2010

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28 EDWARD C. REED
United States District Judge